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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,723	02/24/2004	Douglas A. Learned	INCIT:66043	2757

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EXAMINER	
MYERS, ADAM C	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/786,723	LEARNED, DOUGLAS A.	
	Examiner	Art Unit	
	Adam C. Myers	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 February 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *7/7/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

Claims 1 and19 recites the limitation "the vertical...movement" in line 3, page 17. There is insufficient antecedent basis for this limitation in the claim. In the current line of dependence, a vertical auger movement is not disclosed prior to the limitation of "the vertical...movement."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Levine (US Pat 4,637,221). Levine has taught an apparatus for the blending of hard ice cream or other frozen confection with syrups or other ingredients. The apparatus comprises a housing (Fig 1, ID 10), a funnel (ID 21) configured to receive the ingredients and dispense the frozen confection, a rotatably mounted auger (ID 26) that enters the funnel for blending, and an electronic control system for controlling the motion of the auger (Fig. 3). Levine has disclosed that in one embodiment of the apparatus, the auger moves downward towards the funnel in order to engage and blend

the ingredients (col 10, lines 17-22). Levine has thus disclosed all the features of instant claim 1 that the applicant deems their invention.

In regard to claim 2, the auger of Levine is adjustably mounted to the housing, thus allowing for its motion.

In regard to claim 3, the electronic control system controls a drive motor that rotates the auger (col. 7, lines 35-55).

In regard to claim 4, the drive motor operates for a predetermined time (col 7, lines 35-55), and at a specific speed (col 4 lines 1-10). The specific speed is inherent, as Levine has disclosed that the auger operates at 350 rpm. Given that the motor drives the auger, a constant auger speed is directly proportional to a constant motor speed.

In regard to claim 5, Levine has disclosed a safety control system that inhibits the auger control system if safety interlock functions are not in a predetermined state (col 2, lines 50-65).

In regard to claim 13, the disclosure of Levine presented above anticipates the first three limitations presented in the instant claim. In regard to the limitation directed to a control system, Levine has disclosed a control system comprising a control panel, a safety interlock system, a microprocessor, and an auger control system.

In regard to claim 14, the microprocessor processes command inputs into the control panel with the safety interlock system commands to initiate the auger control system.

In regard to claim 15, Levine has disclosed that the auger rotation is inhibited if the safety system is not verified.

In regard to claim 16, the electronic control system controls a drive motor that rotates the auger.

In regard to claim 17, the control system of Levine controls the motor that vertically moves the auger.

In regard to claim 18, the control system is programmed to operate the drive motor for a predetermined time.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine. Levine is taken as cited above. The limitation presented in claim 6 that is not disclosed by Levine is the plurality of holes disposed in the auger, the holes configured

to project a cleaning fluid. Levine has taught a spray nozzle (Fig 1, ID 40), the spray nozzle disposed near the auger to project cleaning fluid over the auger for cleaning the auger and funnel after use. Given that Levine has disclosed all the features necessary to properly clean the auger and funnel after use, a different location for the spray nozzle does not provide an inventive step over the prior art.

In regard to claims 7-10, Levine has disclosed multiple safety precautions monitored by the operator and/or the microprocessor of the apparatus. These safety precautions comprise; requiring the operation to manipulate two switches simultaneously to keep hands free of moving parts, spring biased power and wash switches, keeping the refrigeration relay out of the circuit powering the apparatus, a safety scan subroutine performed by the microprocessor, and an emergency safety bar. Given that Levine has illustrated multiple features for increasing the safe operation of the apparatus, any limitations of the instant claims directed to safety not explicitly taught by Levine would have been obvious to one of ordinary skill in the art.

In regard to claim 11, Levine has taught that the electronic control system is programmed to mix the frozen confection for a predetermined time.

In regard to claim 12, the funnel of Levine comprises an opening at the upper section of the funnel, and a valve with a tip for dispensing the frozen confection.

Claims 19-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine in view of Curry et al (US Pat 5,030,465). Levine is taken as cited above. The limitation of the instant claim 19 that has not been taught by Levine is that of injected air being mixed with the frozen confection. Curry has taught a method for making frozen

confections, the method comprising injection of air from a pressurized source into a liquid food substance, mixing the air and liquid food substance, and freezing the mixture to produce a frozen confection. It is well known that air is less dense that a frozen solid confection, and the incorporation of air within the confection would produce a product with an overall lower density, adding to the softness already being sought by the invention of Levine. Because the injection of air in the method for producing a frozen confection has been disclosed in the art, one of ordinary skill would have been provided motivation to add an air injection step to the method of Levine because of the obvious and expected advantage of a softer frozen confection.

In regard to claim 20 and 21, Levine has disclosed that the other ingredients that are mixed into the frozen confection comprise fruit.

In regard to claim 22, the rejection applied to instant claim 6 is applied to the instant claim 22, as both are drawn to subject matter involving the cleaning of the auger and funnel after use.

In regard to claims 23-26, the safety features of Levine have been disclosed above, and the instant claims are rejected as being obvious to one of ordinary skill in the art. The safety precautions set forth by Levine have taught solutions to the well-known problem of operator safety, and the instant claims lack an inventive step over the disclosure of Levine.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam C. Myers whose telephone number is 571-272-6466. The examiner can normally be reached on Monday-Friday, 8am-4: 30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

acm

KEITH HENDRICKS
PRIMARY EXAMINER